

I. Telephone Conference with Examiner

Applicants' representatives thank Examiner Vital for his courtesy in granting and conducting a telephone conference, held on May 3, 2006, during which the rejections of claims 1 and 11 were discussed. The substance of that telephone conference is summarized herein.

II. Information Disclosure Statement

The Office Action states that the Information Disclosure Statement (IDS) dated December 14, 2005 fails to comply with 37 C.F.R. § 1.98(a)(3) because Japanese Patent Application Public-Disclosure (JPAP) No. 6-83682 is not in the English language, and an explanation of its relevance was not provided.

U.S. Patent No. 5,524,205, which was provided with the December 14, 2005 IDS, is in the same family as (i.e., JPAP No. 6-83682 claims priority to the parent of U.S. Patent No. 5,524,205) and has the same inventors and figures as JPAP No. 6-83682. Thus, U.S. Patent No. 5,524,205 appears to provide an explanation of the relevance of JPAP No. 6-83682. This document has been cited in the IDS submitted herewith, along with a machine translation of JPAP No. 6-83682. Accordingly, consideration of JPAP No. 6-83682 is respectfully requested.

III. Rejection of Independent Claim 1 and Associated Dependent Claims

Claim 1 was rejected under 35 U.S.C. § 103(a) as allegedly being obvious over U.S. Patent No. 6,000,020 (Chin) and Japanese Patent Application Public-Disclosure (JPAP) No. 5-241933.

The Office Action concedes that Chin does not teach or suggest "accessing the second storage device without using any of the one or more communication links that couple the storage domain to the host domain and that communication between the plurality of primary storage devices and the storage device can occur over the network simultaneously with communication between the host domain and the storage domain through the one or more communication links." However, the Office Action alleges that it would have been obvious to modify the system of Chin to include the type of network and communication links described by JPAP No. 5-241933 "because it was well

known to provide a file maintenance system capable of averting adverse effects such as file corruption as taught by JPAP No. 5-241933.”

During the telephone conference with the Examiner, Applicants’ representatives pointed out that JPAP No. 5-241933 teaches a direct, non-network connection between master file 2 and backup unit 3. Thus, even if the teachings of JPAP No. 5-241933 were combined in some manner with those of Chin (which Applicants do not concede is proper), the combination would not disclose or suggest “a network... that couples the plurality of primary storage devices to the secondary storage device,” as recited in claim 1.

The Examiner agreed that the combination of Chin and JPAP No. 5-241933 does not disclose or suggest this feature. Accordingly, withdrawal of the rejection of claim 1, and claims 2-10 and 26 which depend therefrom, is respectfully requested.

In view of the foregoing, it seems unnecessary at this time to address the lack of a suggestion or motivation to combine the teachings of Chin and JPAP No. 5-241933, but Applicants reserve the right to do so if the rejection is maintained.

#### IV. Rejection of Independent Claim 11 and Associated Dependent Claims

Claim 11 was rejected under 35 U.S.C. § 103(a) as allegedly being obvious over U.S. Patent No. 6,035,412 (Tamer) in view of the Nikkei Computer article dated April 27, 1998.

The Office Action concedes that Tamer does not teach that the plurality of host computers are heterogeneous. However, the Office Action alleges that it would have been obvious to modify the system of Tamer to include a heterogeneous plurality of host computers and a multi-platform as taught by Nikkei so that a readout can be performed at high speed once data is converted as taught by Nikkei.

The Office Action thus relies on the portion of Nikkei that teaches an “intermediate file method,” wherein data to be accessed by multiple servers is converted into an intermediate file in advance.<sup>1</sup> According to this method, data is backed up into a common (i.e., single) intermediate file format. Thus, as explained during the telephone conference, Nikkei does not disclose or suggest “a single backup controller capable of backing up data stored from both the first and second host computers on the plurality of primary storage devices to the secondary storage device, *wherein the data stored from the first host computer on the plurality of primary storage devices has a first format established by the first platform and the data stored from the second host computer on the plurality of primary storage devices has a second format established by the second platform,*” as recited in claim 11.

During the telephone conference, Applicants’ representatives noted that Nikkei teaches no more than U.S. Patent No. 5,848,241 (“Misinai”), which was used as the basis of an earlier rejection that was subsequently withdrawn. In particular, in a response dated October 18, 2004, Applicants pointed out that Misinai discloses a single controller that converts data of a first format and a second format to a third “common” format. As explained in that response, at most, Misinai would have motivated a person of ordinary skill in the art to modify the Tamer system to include heterogeneous computer systems that share data items stored in *a single format* on a data storage system. Thus, the combination did not disclose or suggest a single backup controller capable of backing up data stored on primary storage devices in different formats established by heterogeneous host computers. The same applies to Nikkei.

During the telephone conference, the Examiner indicated that he appreciated the distinction pointed out by Applicants’ representatives, but wanted to further review Nikkei. The Examiner also

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<sup>1</sup> The portion of Nikkei cited by the Examiner appears at item 2-7 of page 2 under the heading “Intermediate File Method,” in the partial translation of the Nikkei reference originally submitted with the Information Disclosure Statement mailed December 14, 2005.

Applicants note that the partial translation of the Nikkei reference originally submitted did not provide a full discussion of the intermediate file method. Therefore, it is suggested that the Examiner consider the full translation of the Nikkei reference submitted with the Information Disclosure Statement mailed on March 9, 2006. The relevant passage may be found at page 3 of the full translation, under the heading “Using an ‘Intermediate File’.”

stated that he would contact the Applicants' representatives to further discuss the rejection if he was not persuaded after his review of Nikkei.

In view of the foregoing, withdrawal of the rejection of claim 11, and claims 12-18 and 27 which depend therefrom, is respectfully requested. If the Examiner is not persuaded to withdraw the rejection, a further telephone conference is respectfully requested.

**CONCLUSION**


In view of the foregoing amendments, this application should now be in condition for allowance. A notice to this effect is respectfully requested. If the Examiner believes, after this amendment, that the application is not in condition for allowance, the Examiner is requested to call the Applicants' attorney at the telephone number listed below.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicants hereby request any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825.

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Respectfully submitted,

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